Table of Contents.

Citations to opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	3
Statement	3
Summary of argument	6
Argument	7
I. The lower court suit was within in the purview of section 301	7
II. The legislative history of section 301 warrants a holding by this Court that federal courts have exclusive jurisdiction over all cases meeting the requirements of section 301	9
III. Previous decisions of this Court compel the conclusion that the lower court had no jurisdiction over the subject matter of the bill of complaint	21
Conclusion	26
Appendix	27

Table of Authorities Cited.

Cases.

A. L. Kornman Co. v. Amalgamated Clothing Workers, 264 F. 2d 733	8
Coleman Co., Inc., v. International Union, United Auto, Aircraft and Agricultural Implement Workers of America, 181 Kans. 969	19
Erie Railroad Co. v. Tompkins, 304 U.S. 64	19

Fay v. American Cystoscope Makers, 98 F. Supp. 278 17
Garner v. Teamsters Union, 346 U.S. 485 14, 24
Guss v. Utah Labor Relations Board, 353 U.S. 1 24
International Association of Machinists v. Gonzales, 356 U.S. 617 10, 20
International Plainfield Motor Co. v. Local #343, 123 F. Supp. 683 17
McCarroll v. Los Angeles County District Council of Carpenters, 304 P. 2d 781 26
McCarroll v. Los Angeles County District Council of Carpenters, 49 Cal. 2d 45; cert. den. sub nom. Los Angeles County Dist. Council of Carpenters v. McCarroll, 355 U.S. 932 19, 26
San Diego Building Trades Council v. Garmon, 359 U.S. 236 13, 24
Swift & Co. v. United Packing House Workers of America, 177 F. Supp. 511 19
Textile Workers Union v. Arista Mills Co., 193 F. 2d 529 25
Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U.S. 448 8, 9, 13, 15, 16, 18, 19
U.A.W. v. Buffalo Springfield Roller Co., 131 F. Supp. 667 18
United Automobile Workers v. Russell, 356 U.S. 634 20
United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656 20
United Steel Workers of America v. New Park Mining Co., 273 F. 2d 352 25
Weber v. Anheuser-Busch, Inc., 348 U.S. 468 10, 13
Westinghouse Salaried Employees, Association of, v. Westinghouse Electric Corp., 348 U.S. 437 8

Westinghouse Salaried Employees, Association of, v. Westinghouse Electric Corp., 210 F. 2d 623, n. 16 18

STATUTES, ETC.

28 U.S.C. § 1257 2

Labor Management Relations Act of 1947 (Taft-Hartley Act), 61 Stat. 136, 29 U.S.C. 141 et seq. 2 et seq.

H. R. Rep. No. 245, 80th Cong., First Sess., pp. 45-46 11

S. Min. R. No. 105, 80th Cong., First Sess., p. 13 25

S. Min. R. No. 105, 80th Cong., First Sess., pp. 13-14 10

S. R. No. 105, 80th Cong., First Sess., p. 15 25

S. R. No. 105, 80th Cong., First Sess., pp. 15-18 10

S. R. No. 105, 80th Cong., First Sess., p. 16 15

Hearings before Committee on Labor and Public Welfare on S55 and SJ Res. 22, 80th Cong., First Sess., p. 57 12

MISCELLANEOUS.

Boundaries of State-Federal Jurisdiction, 13 N.Y.U. Conf. L. 51, 72-73 11

Brody, Federal Pre-emption Comes of Age in Labor Relations, 5 Lab. L. Journal, 743, 748 18

Cox & Seidman, Federalism in Labor Relations, 6 H.L.R. 211 14

37 N.C.L. Rev. 500, 504-505 8

6 Villanova L. Rev. 80, 88 14

Supreme Court of the United States.

OCTOBER TERM, 1960.

No. 641.

CHARLES DOWD BOX CO., INC., *Petitioner,*

v.

JOHN F. COURTNEY ET ALS., AS THEY FAIRLY REPRESENT THE MEMBERSHIP OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND ITS LOCAL 5158,* *Respondents.*

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

BRIEF FOR PETITIONER.

Citations to Opinion Below.

The opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts (R. 69) is reported in Massachusetts Advance Sheets (1960) at pages 1085-1090 and at 169 N.E. 2d 885.

Jurisdiction.

The decision of the Full Court of the Supreme Judicial Court of the Commonwealth of Massachusetts was rendered on November 7, 1960 (R. 69). The final decree of the Superior Court after rescript and in accordance with

*The names of the individual plaintiffs (now respondents in this Court) are set forth on page 1 of the record.

the opinion of the Supreme Judicial Court was entered on December 5, 1960 (R. 73). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. The applicable portion of section 1257 is as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . . . . .
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

The petition for writ of certiorari was filed in this Court on January 9, 1961, and certiorari was granted by the Court on February 20, 1961 (R. 79).

Question Presented.

The question presented is whether Congress, in enacting the Labor Management Relations Act of 1947 (commonly referred to as the Taft-Hartley Act), 61 Stat. 136, 29 U.S.C. § 141, pre-empted to the exclusive jurisdiction of the federal courts that field of litigation involving violations of collective bargaining agreements when interstate commerce would be affected thereby in such a manner that

the lower court in this action was without jurisdiction to hear or determine this action.

Statute Involved.

The statutory provision involved is section 301 (a) of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. § 185, p. 180. Section 301 (a) reads as follows:

> "(a) Suits for violation of contract between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Other pertinent statutes are set forth at appropriate points in this brief.

Statement.

The respondents, members of the United Steelworkers of America, AFL-CIO, and its Local 5158, both individually and on behalf of all members of the United Steelworkers of America, AFL-CIO (hereinafter referred to as "United"), and on behalf of all members of said Local 5158 (hereinafter referred to as "Local"), brought a bill in equity (R. 1) in the Superior Court of the Commonwealth of Massachusetts to enforce an alleged collective bargaining agreement with the petitioner, "Exhibit C" (R. 7). The bill of complaint alleged a termination of said

agreement (R. 3) and contained prayers for preliminary and permanent injunctions against termination of said agreement by the petitioner (R. 5), specific performance (R. 5), and damages for a purported termination of the alleged collective bargaining agreement (R. 5).

The defendant (petitioner here) filed a demurrer and answer to the bill of complaint (R. 40), the demurrer raising the federal question set forth above (R. 41). The demurrer of the defendant was overruled (R. 43-44) and the defendant appealed (R. 44) to the Supreme Judicial Court for the Commonwealth of Massachusetts. The case was referred by the Superior Court to a master, who held hearings on the merits of the case and filed his report (R. 45).

The master found in his report that all of the plaintiffs, with the exception of Roy Stevens, were officers of Local 5158 of the United Steelworkers of America, AFL-CIO, and that Roy Stevens was an International Representative of United (R. 45); that the defendant manufactured corrugated containers sold in interstate commerce and that the defendant purchased substantial quantities of supplies in interstate commerce (R. 45); that the Local was first certified as the bargaining agent of the Company's employees in 1954, and the first collective bargaining agreement between the Union and the Company was executed in June of 1955 to run through May 18, 1957 (R. 45); that in the early months of 1957 the Local negotiated with the Company negotiating committee for the establishment of a new collective bargaining agreement (R. 45); that on May 21, 1957, oral agreement was reached as to the basic items of the new collective bargaining agreement and a stipulation (R. 6 and "Exhibit A" attached to the bill of complaint) was signed (R. 45); that on May 28 the language of the alleged new agreement was agreed upon by the Company and the Union in Boston (R. 46); that on

August 2, 1957, David Dowd signed the copies of the purported new collective bargaining agreement (R. 7 and "Exhibit C" attached to the bill of complaint and Exhibit 8 attached to the master's report) and delivered the same to Andonian, allegedly a Union official (R. 46); that on August 12, 1957, Courtney, the President of the Local, was informed that David Dowd had no longer anything to do with labor relations for the Company (R. 46); that thereafter on the same day officers of the Local and Andonian signed the new collective bargaining agreement (R. 46); and thereafter the agreement was sent to Boston and Pittsburgh (R. 46) for signatures of the officers of United (R. 46); that the signatures of the officers of United were affixed between August 13 and September 12, 1957 (see paragraph 21, appearing at R. 54); that the defendant initiated changes in accordance with the purported collective bargaining agreement until the latter part of August, 1957 (R. 46), and on September 4, 1957, the defendant notified its employees (R. 39 and "Exhibit D" attached to bill of complaint) that it would terminate said changes (R. 46); that Andonian and Courtney, as officers of United and the Local, were notified of David Dowd's lack of authority prior to the execution of the agreement by United (R. 46-47); and that Exhibit 8 ("Exhibit C" to Bill of Complaint) constituted a collective bargaining agreement between the parties (R. 54, paragraph 24).

The Company contended that its negotiating committee acted beyond its authority if it in fact agreed to the changes contained in "Exhibit C" attached to the bill of complaint (R. 46); that David Dowd had no authority to execute and deliver the purported new collective bargaining agreement (R. 46); and that no valid agreement between the Company and the Union was entered into prior to the Company's notification to United and the Local that the purported agreement was unsatisfactory to the Company.

The petitioner filed objections to the report of the master and filed a motion to dismiss for want of jurisdiction, again raising the federal question set forth above (R. 56). The motion to dismiss for want of jurisdiction was denied (R. 56). After other proceedings, not here material, in the Superior Court, a final decree was entered in the Superior Court adverse to the petitioner (R. 58). From this final decree, from the adverse rulings and decrees of the Superior Court on the federal questions involved and from other interlocutory decrees, not here material, the petitioner appealed to the Supreme Judicial Court for the Commonwealth of Massachusetts. The Supreme Judicial Court rendered its opinion (R. 69) on November 7, 1960, a rescript (R. 68), was received by the Superior Court, and a final decree after rescript (R. 73) was entered in the said Superior Court for Worcester County. The opinion of the Supreme Judicial Court was adverse to the petitioner's contention that the Labor-Management Relations Act precluded the exercise by the Massachusetts courts of jurisdiction over the subject matter of the action commenced by the respondents.

Summary of Argument.

I. The lower court action fell within the boundaries of section 301 since more than uniquely personal rights were sought to be enforced by the plaintiffs therein.

II. Congress in enacting section 301 of the Labor Management Relations Act pre-empted to the federal courts suits involving violations of collective bargaining agreements between parties engaged in an industry affecting interstate commerce. The Massachusetts courts were therefore without jurisdiction to hear or determine the subject matter of the action commenced in the Worcester Superior Court.

III. The conduct of the petitioner, complained of by the plaintiffs in the lower court action, if established to be true, constituted an unfair labor practice. This Court in prior decisions has held that state courts cannot in these circumstances exercise jurisdiction. For this reason alone the lower court judgment must be reversed.

Argument.

I.

The Lower Court Suit was Within the Purview of Section 301.

The master expressly found in his report (R. 45) that the petitioner sold containers in interstate commerce and purchased substantial supplies in interstate commerce. In addition, the master found in his specific finding No. 23 (R. 54):

> "I find that Company sells a substantial part of its products and buys a substantial part of its supplies in interstate commerce."

Thus there can be no question raised that the petitioner and its employees were not engaged in an industry affecting interstate commerce within the meaning of section 301.

In addition, the lower court suit was a class action wherein the plaintiffs were allegedly fairly representative of the Local and United. The named plaintiffs in the lower court action were the vehicle for maintaining United's right of action, for United was allegedly the party contracting with the defendant (R. 7, 47). The plaintiffs in the state court action sought specific performance of each provision of the purported collective bargaining agreement, injunctions in aid of enforcement, and

damages for termination of the agreement (R. 4, 5). The bill of complaint states in detail (R. 3, 4) those items contained in "Exhibit C" (R. 7) which the plaintiffs sought specifically to enforce. If this list of items and the provisions of "Exhibit C" are examined, it is evident that more than uniquely personal rights of the employees of the petitioner were the subject matter of the suit, and that United and the Local had interests in many provisions of that document, such as Article I (R. 7, 8), providing for the recognition of the union, and Article XX, providing for union shop and check-off (R. 24-25). These were of vital concern to United and the Local. This is not a case such as *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, which was a suit by the Union on behalf of 4000 employees to recover merely a day's pay for each. Indeed, the vitality of *Westinghouse* has been questioned in many quarters in view of the opinion of this Court in *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448. See, for example, 37 N.C.L. Rev. 500, 504-505 (May, 1961), and see also *A. L. Kornman Co.* v. *Amalgamated Clothing Workers*, 264 F. 2d 733 (6th Cir. 1959), in which enforcement of an arbitration award was granted.

The fact that specific performance is sought does not take this suit out of the section 301 area.

Textile Workers Union of America v. *Lincoln Mills of Alabama*, 353 U.S. 448.

In *Lincoln Mills* only specific performance of an agreement to arbitrate was sought. The suit by the respondents here in the lower court sought specific performance of all of the provisions in the purported collective bargaining agreement, and accordingly is a stronger case under section 301 than was *Lincoln Mills*.

It should be noted that the respondents agree that the cause of action appropriately falls within section 301 (see Brief of Respondents in Opposition to Petition to Writ of Certiorari, at page 3). The fact that through lapse of time and crowded court dockets specific performance and injunction remedies became inappropriate and the final decree awarded only monetary damages does not change the gravamen of the bill as originally filed or compel a holding by this Court that the action could not have been brought under section 301.

II.

The Legislative History of Section 301 Warrants a Holding by This Court that Federal Courts have Exclusive Jurisdiction over All Cases Meeting the Requirements of Section 301.

At the outset it must be fairly admitted that, as stated by this Court in *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448, 452—

> "The legislative history of § 301 is somewhat cloudy and confusing."

However, this fact is not surprising in view of the differences of opinion of the majority and minority factions with respect to the merits of the section as it was proposed. The opponents of section 301 raised primarily questions concerning the probable conflict of the United States District Courts under section 301 with the National Labor Relations Board proceedings under sections 7 and 8 of the Labor Management Relations Act of 1947, the lack of need of section 301, and the constitutionality of section 301.

S. Min. R. No. 105, 80th Cong., First Sess. pp. 13-14.

The proponents of the section, anxious, no doubt, to have the Act passed, concerned themselves primarily with the lack of uniformity of state laws concerning suits for violations of collective bargaining agreements and lack of any remedies of any sort in some states due to procedural difficulties. The majority did not reach out to anticipate, or in express terms deal with, the federal question here presented.

S. R. No. 105, 80th Cong., First Sess., pp. 15-18.

The lack of explicit language on the federal question here presented should not, of itself, however, deter this Court in finding that all actions meeting the requirements of section 301 have been pre-empted to the federal courts.

> "The statutory implications concerning what has been taken from the States and what has been left to them are of a Delphic nature, to be translated into concreteness by the process of litigating elucidation." *International Association of Machinists* v. *Gonzales*, 356 U.S. 617, 619.

> "This penumbral area can be rendered progressively clear only by the course of litigation." *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 480-481.

> "During the period in which preemption law respecting labor-management relations was in the main developed, it could not accurately be said that Congress had considered and contemplated the exclusion of state authority in the various situations that gave rise to the decisions which are now controlling. Cer-

tainly the statutory language itself was imprecise in this respect. To talk in terms of congressional intent in justifying these decisions is to use a shop-worn term in its loosest sense. But this is not to say that the decisions are incorrect or unsupportable. The necessary implications of congressional legislation often carry far beyond the limits of express congressional consideration, and to deny such implications may well be to cripple the effectiveness of the legislation. This is all the more true with respect to a comprehensive regulatory enactment relating to so dynamic a field as labor-management relations. Part of the genius of this kind of legislation, if drafted with insight and intelligence, is its capacity for overcoming, simply by its own momentum, unforeseen obstacles in its operation." Boundaries of State-Federal Jurisdiction, 13 N.Y.U. Conf. L. 51, 72-73.

While Congress evidently did not give specific consideration to the federal question here presented prior to the enactment of section 301, it cannot rightly be disputed that the entire legislative history of section 301 indicates a desire on the part of Congress to have the parties to a collective bargaining agreement be bound by that agreement and to create a remedy to enforce obligations under that agreement. As pointed out above, Congress was aware of the lack of uniformity in state laws and desired to afford a uniform remedy available to all parties, regardless of state affiliations, against violations of collective bargaining agreements.

See H. R. Rep. No. 245, 80th Cong., First Sess., pp. 45-46.

The provision for a cause of action and remedy under section 301 was a part of the overall program of Congress in

formulating a comprehensive federal scheme governing labor relations. In commenting upon the alleged unconstitutionality of section 301, Senator Taft said:

> "I don't see why suits regarding such collective bargaining contracts, when made, are not properly the subject of Federal law arising under the laws of the United States, therefore subject properly to the jurisdiction of the Federal Courts. I don't understand how we can cover the whole subject, if we do, in Federal laws, and then say, when you come down to suing about it, that the Federal Court has no jurisdiction." Hearings before Committee on Labor and Public Welfare on S55 and SJ Res. 22, 80th Cong., First Sess., p. 57.

The question, then, is how can the overall intention of Congress as expressed in section 301 and its legislative history be best served? This Court has often held, in areas within the province of the National Labor Relations Board, that state jurisdiction must yield to the federal law.

> "When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically di-

rected toward the governance of industrial relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes." *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 244.

"As to both categories, the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action." *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, 480.

It is submitted that the foregoing language used by this Court with reference to areas over which the National Labor Relations Board has jurisdiction is equally applicable when it comes to a party seeking enforcement of a violation of a collective bargaining agreement. If creation of a federal body of law and uniformity of remedy was the intention of Congress, as it was, this intention can best be carried out if federal courts have exclusive jurisdiction of actions meeting the requirements of section 301. The alternative is the probability of conflict among decisions of federal courts and fifty state courts in cases involving violations of collective bargaining agreements in industries affecting commerce, even though those courts may purport to apply federal law (*Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448). This potential area of conflict is not to be lightly disregarded.

"A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of sub-

stantive law . . ." *Garner* v. *Teamsters Union*, 346 U.S. 485, 490-491.

"At a time when increasing erosion of state power has even given old friends of federalism cause for alarm, it is difficult to argue for a greater extension of federal power. However, in the area of labor relations extended federal power seems only appropriate. The competence of the states in the collective bargaining process has lagged tremendously behind that of the United States Government. The choice between applying federal law or state law in the newly empowered state courts and agencies is a choice between a highly sophisticated body of federal law and, in many states, a few antiquated precepts." 6 Villanova L. Rev. 80, 88.

See also Cox & Seidman, Federalism in Labor Relations, 64 H.L.R. 211, at 230, wherein it is stated:

"Where the Federal Government has enacted what was intended to be a comprehensive program for dealing with such problems, it should be encouraged to retain the responsibility and the states should be excluded from the entire area except where Congress has explicitly authorized them to intervene."

That section 301 does not come within the jurisdiction of a special administrative board such as the National Labor Relations Board should not determine that concurrent state jurisdiction is available in section 301 cases if the overall purpose of Congress would be frustrated. Congress considered that enforcement of collective bargaining agreements was of equal importance with the processes

which the parties go through to consummate such agreements.

"If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.

"Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal courts. Our amendment would provide for suits by unions as legal entities and against unions as legal entities in the Federal courts in disputes affecting commerce." S. R. No. 105, 80th Cong., First Sess., p. 16.

This Court has already decided the difficult question as to whether or not section 301 was merely a procedural statute or whether by enacting section 301 Congress intended to create a substantive body of law and thus create a remedy. This Court in the *Lincoln Mills* case resolved that conflict once and for all and held that substantive rights were created by the enactment of section 301 and that federal courts shall fashion a federal body of law.

"Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor

organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way.

. . . . . .

"The question then is, what is the substantive law to be applied in suits under § 301 (a)? We conclude that the substantive law to apply in suits under § 301 (a) is federal law, which the courts must fashion from the policy of our national labor laws. . . . Federal interpretation of the federal law will govern, not state law. Cf. *Jerome* v. *United States,* 318 U. S. 101, 104.

. . . . . .

"It is not uncommon for *federal courts to fashion federal* law where *federal rights* are concerned. . . . Congress has indicated by § 301 (a) the purpose to follow that course here. . . . The power of Congress to regulate these labor-management controversies under the Commerce Clause is plain. . . . A case or controversy arising under § 301 (a) is, therefore, one within the purview of judicial power as defined in Article III." (Emphasis supplied.) *Textile Workers Union of America* v. *Lincoln Mills of Alabama,* 353 U.S. 448, 455-457.

If the foregoing quoted portion is read with emphasis as supplied above, this Court has already gone a long way toward establishing pre-emption in the areas of litigation encompassed by section 301. Once the establishment of a federal body of law has been decided as it was in *Lincoln Mills,* it would seem logically to follow that it should be the *federal* courts which develop that federal law and ap-

ply the same. A concurrent state remedy would only muddy the waters and serve no useful purpose.

In *Foy* v. *American Cystoscope Makers*, 98 F. Supp. 278, 280-281, which involved a motion to remand to the state court, after a breach of contract suit by the Union had been removed by the Union to the federal District Court, the latter court said, in denying the motion:

> "To hold otherwise would vest the plaintiff with power to withhold from a defendant the use of the forum which Congress has chosen to make available.
>
> "Such power in the plaintiff could only be justified if Section 185 left intact a separate and independent state cause of action for contract between unions and employers where the component of interstate commerce was present. If that were the fact, plaintiff might properly rely on the principal that he may elect to rely upon whichever law he desires . . . however, in the light of the determination that the Section creates a new, Federal, substantive right, . . . it seems clear that Congress pre-empted the field in this area.
>
> "The suggestion that the plaintiff should be permitted to compel defendant to litigate a federal claim in the State Court when Congress has explicitly made available a Federal forum is indefensible. Motion to remand is denied."

In *International Plainfield Motor Co.* v. *Local #343*, 123 F. Supp. 683, 692, the court held, in construing section 301:

> "Congress not only has created a substantive right in the exercise of its power under Article I, Section 8, cl. 3 of the Federal Constitution, the commerce clause, but it has also provided both the procedure for enforcing that right and the forum in which disputes

between the employer and the labor union should be heard . . .

"Since the Federal Court has been provided as the forum in which disputes of this nature are determined, *no other forum is available.*" (Emphasis supplied.)

See also *U.A.W.* v. *Buffalo Springfield Roller Co.*, 131 F. Supp. 667, 668.

In *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.*, 210 F. 2d 623, 629-630, n. 16, the court indicated:

"There is no such choice of forums under Section 301, seemingly indicating that Congress intended to pre-empt to the Federal Courts litigation on collective bargaining contracts."

This last statement in the Third Circuit opinion in *Westinghouse* was not disputed nor in any way modified by Mr. Justice Frankfurter in announcing the decision of this Court when the *Westinghouse* case came before this Court and was reversed on other grounds. In addition, the Third Circuit opinion in *Westinghouse* was cited in the *Lincoln Mills* case, and again the foregoing statement, with reference to pre-emption, was not modified or disputed.

It has been suggested that it is safe to assume that the Federal Government has pre-empted the entire field of labor relations whenever the Labor Management Relations Act applies.

Brody, Federal Pre-emption Comes of Age in Labor Relations, 5 Lab. L. Journal, 743, 748.

Opposed to the foregoing decisions are some opinions of state courts which have been reluctant to hold that by the

enactment of section 301 they were precluded in appropriate cases from exercising jurisdiction.

McCarroll v. *Los Angeles County District Counsel of Carpenters*, 49 Cal. 2d 45, 57-60; cert. den. *sub nom. Los Angeles County Dist. Council of Carpenters* v. *McCarroll*, 355 U.S. 932.

Coleman Co., Inc., v. *International Union, United Auto, Aircraft and Agricultural Implement Workers of America*, 181 Kans. 969.

It is the petitioner's position that the interpretation placed on section 301 by such state courts is in conflict with the language contained in the *Lincoln Mills* opinion and does not foster the formation of the uniform body of federal law in this area which was contemplated by Congress and by this Court in the *Lincoln Mills* case. While a state court may naturally tend to resist limitations of its jurisdiction, if such an interpretation prevails, forum shopping will result, and the converse of the difficulties which surrounded the federal courts prior to *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64, will inevitably occur.

This erroneous interpretation has already spawned anomalous results. In the case of *Swift & Co.* v. *United Packing House Workers of America*, 177 F. Supp. 511, a state court action was commenced by the employer and the Union removed the case to the federal District Court. On the employer's petition to remand the action to the state court it was held that, as to the prayer for an injunction, that portion of the case should be remanded. The District Court, however, did not remand that portion of the case in which the plaintiff sought damages, since section 301 specifically provided for original jurisdiction. The cause of action was thus split and the possibility of

conflicting decisions of two courts on the same factual situation was created. Surely Congress did not intend to create or give approval to forum shopping.

A decision of this Court holding that section 301 type cases must be brought exclusively in federal District Courts would not take all powers with respect to labor relations away from state courts nor would it create any hardships upon parties to collective bargaining agreement. No new "no-man's land" (if, indeed, this would constitute an obstacle) would be created. The effect on the parties would be merely that they would be required to litigate breaches of collective bargaining agreements in the federal District Courts when the agreements involved industries affecting interstate commerce. The effect, on the other hand, with respect to the intention of Congress would be substantial, for it would implement the admitted Congressional intention to promote federal regulation of labor relations in industries affecting commerce and it would eliminate the probability of conflicting state court decisions and interpretations with respect to a federal body of law. There would still be left to a state court the right to assume jurisdiction—

(1) to properly exercise its police powers where acts of violence occur;

United Automobile Workers v. *Russell*, 356 U.S. 634;

United Construction Workers v. *Laburnum Construction Corp.*, 347 U.S. 656;

(2) where the gravamen of the action is merely peripheral to the Labor Management Relations Act;

International Association of Machinists v. *Gonzales*, 356 U.S. 617;

(3) where the National Labor Relations Act permits state action—for example, under sections 10(a) and 14(b).*

(4) where suits for damages are based on unlawful boycotts and brought under section 303 (b) of the Labor Management Relations Act.*

(5) where the suits involve violations of collective bargaining agreements in an industry not affecting interstate commerce.

The overall policy of Congress as expressed in section 301 and in its legislative history indicates that District Courts should have exclusive jurisdiction over lawsuits meeting the requirements of section 301. As no compelling reason dictates to the contrary, this Court should so hold.

III.

Previous Decisions of This Court Compel the Conclusion that the Lower Court had No Jurisdiction over the Subject Matter of the Bill of Complaint.

Whether or not this Court decides that all suits for violations of collective bargaining agreements between parties in industries engaged in interstate commerce must be brought in federal courts, the Massachusetts courts had no jurisdiction in this case.

The bill of complaint filed by the respondent in the Worcester Superior Court (R. 1) alleged in effect the unlawful termination by the petitioner of the purported collective bargaining agreement. The respondents sought in that bill of complaint, in prayers "a)" and "b)" (R. 5), restraining orders and injunctions against such termina-

*See Appendix, p. 27.

tion, and, in prayer "f)" (R. 5), damages arising from the acts of the petitioner in terminating the existing collective bargaining agreement.

Section 8 (d) of the Labor Management Relations Act (29 U.S.C. § 158 (d)) provides:

"§ 158. Unfair labor practices.

. . . . . .

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later: . . ."

Section 8 (a) (5) of said Act (29 U.S.C. § 158 (a) (5)) provides that it shall be an unfair labor practice for an employer—

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)."

If the allegations of the bill of complaint are taken as true and are considered in the light of the above-quoted statutory provisions, the conduct of the petitioner in terminating the agreement without complying with section 8 (d) (1) through section 8 (d) (4) constituted an unfair labor practice. This being the case, state jurisdiction must yield to the federal system laid down by Congress for regulating unfair labor practices and in providing a substantive cause of action in section 301 for violations of collective bargaining agreements.

"When it is clear or may fairly be assumed that the activities which a State purports to regulate are

protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed towards the governance of industrial relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes." *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 244.

See also *Garner* v. *Teamsters Union*, 346 U.S. 485.
Guss v. *Utah Labor Relations Board*, 353 U.S. 1.

It is clear from the legislative history of section 301 that Congress intended to give to a party claiming a breach of a collective bargaining agreement in an industry affecting commerce a right of action concurrent and parallel to that party's right to go to the National Labor Relations Board with an unfair labor practice charge.

"The committee bill makes collective-bargaining contracts equally binding and enforceable on both parties. In the judgment of the committee, breaches of collective agreement have become so numerous that it is not sufficient to allow the parties to invoke the processes of the National Labor Relations Board when such breaches occur (as the bill proposes to do in title I). We feel that the aggrieved party should also have a

right of action in the Federal courts." S. R. No. 105, 80th Cong., First Sess., p. 15.

Consider also Senate Minority viewpoint on section 301, at the time it was contemplated, that all contract violations would constitute unfair labor practices under the Taft-Hartley Act.

"Finally, sections 8 (a) (6) and 8 (b) (5) together with section 301 would give rise to a conflict of jurisdiction between the National Labor Relations Board and the United States district courts. This latter section permits suits in the United States district courts for violations of collective bargaining agreements. Parties to such agreements thus have the choice of bringing their action before the Board or the United States district courts." S. Min. R. No. 105, 80th Cong., First Sess., p. 13.

See also *Textile Workers Union* v. *Arista Mills Co.*, 193 F. 2d 529 (4th Cir.).
United Steel Workers of America v. *New Park Mining Co.*, 273 F. 2d 352, 358 (10th Cir.).

It thus becomes quite clear that contract violations which constitute unfair labor practices under section 8 of the National Labor Relations Act are subject to litigation only under section 301 of the Act, and that state courts are precluded from exercising jurisdiction over such violations.

"We are satisfied that in the adoption of section 301, Congress has manifested its purpose to vest jurisdiction over collective bargaining agreements, to a certain extent, where commerce is affected, and unfair

§ 187. BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS; RIGHT TO SUE; JURISDICTION; LIMITATIONS; DAMAGES.

. . . . . .

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.